

REMARKS

Claims 1-9 are in the case, assuming entry of the present amendment.

This amendment is in response to the Final Rejection of March 31, 2006.

The courtesies extended by Examiner Mathews during the telephone interview of May 16, 2006 are noted with appreciation. During the interview the final rejection of claims 1-10 over Ueno was discussed. An amendment to claim 1 was suggested in order to further distinguish the claimed invention from Ueno, i.e., adding the limitation so that the second layer substantially covers the first layer. This amendment is fully supported by the original drawings, as well as a dictionary definition "A single thickness of a material covering a surface or forming an overlying part or segment: *a layer of dust on the windowsill; a cake with four layers.*" www.Dictionary.com. The Final Rejection held that the individual balls, 5, shown in Ueno, constitute a second layer over deformable first layer 2. However, applicant's second layer is quite different, substantially covering applicant's first layer.

Examiner Mathew agreed to enter this amendment under 37 CFR 1.116 in view of the fact that the original search would have uncovered any prior art showing a second layer substantially covering the first layer, especially since such was the only embodiment illustrated in the drawings.

The present application is concerned with a mass produced universal dental appliance which is suitable for use in reducing facial aging. The appliance comprises two parts, each intended in use to contact the posterior teeth on respective opposite sides of either the upper or lower jaw. Ueno, in sharp contrast, shows a bite plate for athletic sports to protect teeth from injury during impact. Ueno makes no disclosure or teaching regarding the potential use for reducing facial aging.

Claim 5 has been amended to be the same scope as claim 10 and claim 10 has been cancelled. The method of Claim 5 is not taught or suggested by Ueno. The holding in paragraph 4 of the first office action that Ueno teaches the structural limitations of claims 5-10 and the method would occur naturally as a user chews is purely speculative. This ground of rejection appears to be based on inherency, i.e., that the reduction of facial aging called for by applicant's claim 5 would be automatically and inherently achieved by using the athletic mouthguard of Ueno. On the contrary, the method of reducing facial aging called for by claim 5 is absolutely novel versus Ueno and would not be inherently achieved by use of the Ueno device. Furthermore, for an inherency rejection of a method claim, the devices must be the same in a 35 U.S.C. 102 sense. In the present case the devices are very different. Ueno

does not have two layers with the second layer substantially covering the first layer, among other distinctions previously pointed out in response to the first office action.

Respectfully submitted,

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